

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

CLARENCE KILPATRICK,

FINAL DECISION AND ORDER

RESPONDENT

LS0110111RSG

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28th day of November, 2001.

Oscar Herrera

Department Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS

AGAINST:

CLARENCE H. KILPATRICK,

PROPOSED DECISION

RESPONDENT

LS0110111RSG

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53708-8935

Respondent:

Clarence H. Kilpatrick

3052 North 40th Street

Milwaukee, WI 53210

Disciplinary Authority:

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 00 RSG 046) with the Department of Regulation and Licensing on October 11, 2001. A disciplinary proceeding (hearing) was scheduled for November 6, 2001. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on October 11, 2001 to Clarence H. Kilpatrick. A certified mail receipt established that the mailing was signed for by someone else on October 12, 2001. No answer was filed by Mr. Kilpatrick. The disciplinary proceeding was held as scheduled on November 6, 2001. Mr. Kilpatrick did not appear. The Department of Regulation and Licensing was represented by attorney Steven Gloe of the Department's Division of Enforcement. Mr. Gloe moved that Mr. Kilpatrick be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded. No transcript was prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

440.26 Private detectives, investigators and security personnel; licenses and permits.

...

(4m) REPORTING VIOLATIONS OF LAW. (a) Definition. In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) Reporting requirement. A person who holds a license or permit issued under this section and who is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.

...

(6) DISCIPLINE. (a) Subject to the rules adopted under s. 440.03 (1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has done any of the following:

1. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.

2. Engaged in conduct reflecting adversely on his or her professional qualification.
3. Made a false statement in connection with any application for a license or permit under this section.
4. Violated this section or any rule promulgated or order issued under this section.

...

440.22 Assessment of costs

...

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

...

RL 35.01 Unprofessional conduct.

The department may deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

...

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26 (4m), Stats., shall send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

...

(17) Providing false information in the application for a credential.

...

FINDINGS OF FACT

1. The respondent, Clarence L. Kilpatrick, holds a Private Security Permit issued by the Wisconsin Department of Regulation and Licensing.
2. The last-known address on file with the Department of Regulation and Licensing for Mr. Kilpatrick is 3052 North 40th Street, Milwaukee, WI 53210.
3. On March 28, 2001, a criminal complaint was filed against Mr. Kilpatrick in Milwaukee County Circuit Court charging him with Battery contrary to section 940.19(2), Stats., a felony. [certified court documents appended to complaint]
4. On or about July 25, 2000, Mr. Kilpatrick answered "no" to the following question on his Private Security Permit Renewal Application: "Have you been convicted within the past two years of a felony, a misdemeanor or a violation of state or local law (other than traffic) that is punishable by a forfeiture, or are charges pending?" [exhibit 2]
5. At the time he answered the above question, the felony battery charge was pending against Mr. Kilpatrick.
6. Mr. Kilpatrick was convicted in Milwaukee County Circuit Court of one misdemeanor count of Battery on August 14, 2001. [certified court documents appended to complaint]
7. Mr. Kilpatrick did not report his conviction to the Department of Regulation and Licensing. [testimony of Elaine Backey]

ANALYSIS

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the department alleging that the respondent, Clarence H. Kilpatrick, violated rules regulating the practice of Private Security Persons. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Sec. 440.20(3), Stats.; 75 Att. Gen. 76; Gandhi v. Medical Examining Board, 168 Wis.2d 299, 483 N.W.2d 295 (Ct.App. 1992).

Mr. Kilpatrick did not answer or appear to contest the allegations. The administrative rules regarding disciplinary proceedings permit the Department to act if a complaint was sent to the respondent's last-known address of record, which was done, and if the respondent fails to answer or appear. Certified court documents establish (1) that a felony charge was pending against Mr. Kilpatrick at the time he completed his renewal application, and (2) that Mr. Kilpatrick was convicted of one misdemeanor count of battery. A photocopy of Mr. Kilpatrick's renewal application establish that he answered "no" to a question about pending charges. Testimony of a Department employee established that Mr. Kilpatrick did not inform the Department of his conviction. These facts establish that Mr. Kilpatrick engaged in unprofessional conduct and is subject to discipline.

Attorney Gloe requested the imposition of a reprimand on Mr. Kilpatrick for his unprofessional conduct. Mr. Gloe stated that he had offered this outcome to Mr. Kilpatrick as a stipulation, but that Mr. Kilpatrick had not signed and returned the stipulation, thus necessitating the formality of a hearing.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. The Department has the discretion to impose all, some, or none of the costs of the proceeding. An order that Mr. Kilpatrick pay the entire cost of the proceeding is included, as a matter of fairness to the other members of the profession. The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred, that licensee should bear the costs of the proceeding. In this case, Mr. Kilpatrick could have reduced the costs by reaching an agreement with the prosecuting attorney earlier in the process. His failure to communicate with the Department prevented that, and imposition of the entire cost of the proceeding is appropriate.

CONCLUSIONS OF LAW

I. The Department of Regulation and Licensing has personal jurisdiction over the respondent, Clarence H. Kilpatrick, based on his holding a credential issued by the Department, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to his last-known address.

II. The Department is the legal authority responsible for issuing and controlling credentials for Private Security Persons, under section 440.26, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c) and sec. 440.26 (6), Stats.

III. Mr. Kilpatrick is in default, under sec. RL 2.14, Wis. Admin. Code, and the Department may enter an order on the basis of the complaint and other evidence.

IV. By providing false information on his application for renewal, Mr. Kilpatrick violated sec. 440.26 (6) (a) 3, Stats., and sec. RL 35.01 (17), Wis. Admin. Code, thereby engaging in unprofessional conduct.

V. By failing to report his misdemeanor conviction to the Department, Mr. Kilpatrick violated sec. 440.26 (4m), Stats., and sec. RL 35.01 (2), Wis. Admin. Code, thereby engaging in unprofessional conduct.

VI. Under sec. RL 35.01, Wis. Admin. Code. and sec. 440.26 (6), Stats., the Department may impose discipline for a Private Security Permit holder who engages in unprofessional conduct.

VII. Under sec. 440.22, Stats., the Department may assess all or part of the costs of a proceeding against a credential-holder who is disciplined.

ORDER

THEREFORE, IT IS ORDERED that Clarence H. Kilpatrick is hereby reprimanded.

IT IS FURTHER ORDERED that Clarence H. Kilpatrick pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

Dated and signed: November 6, 2001

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing